Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 12 FEBRUARY 8, 1978 No. 6

This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 85 cents (single copy). Subscription price: $43.70 a year; $10.95 additional for foreign mailing.

U.S. Customs Service

Treasury Decisions

(T.D. 78-28)

Supplies and Equipment for Aircraft—Customs Regulations amended

Section 10.59(f), Customs Regulations, relating to free withdrawal of supplies and equipment for aircraft, amended to add Guyana to the list of qualified countries

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 10 – ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adds Guyana to the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment to be used in certain circumstances. It has been determined that the Government of Guyana allows substantially the same privileges to aircraft registered in the United States engaged in foreign trade. Based on this determination and U.S. law, a reciprocal exemption from duties and taxes has been granted to aircraft registered in Guyana.

EFFECTIVE DATE: This exemption was effective on September 22, 1977.

FOR FURTHER INFORMATION CONTACT:

Benjamin H. Mahoney, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5778).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes, for supplies (including equipment), ground equipment, maintenance, or repair of aircraft. This privilege is granted if the Secretary of Commerce finds, and advises the Secretary of the Treasury that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States-registered aircraft. Section 10.59(f) of the Customs Regulations (19 CFR 10.59(f)) list those countries whose aircraft have been found to be entitled to these privileges.

In accordance with section 309(d) of the Tariff Act, the Secretary of Commerce has found, and by letter dated September 22, 1977, has advised the Secretary of the Treasury, that Guyana allows privileges substantially reciprocal to those provided in sections 309 and 317 to aircraft registered in the United States and engaged in foreign trade. Corresponding privileges accordingly are extended to aircraft registered in Guyana and engaged in foreign trade, effective as of September 22, 1977.

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the granting of an exemption for which there is a statutory basis, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553

DRAFTING INFORMATION

The principal author of this document was Sanford J. Parnes, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Department of Commerce participated in developing the document, both on matters of substance and style.

AMENDMENTS TO THE REGULATIONS

To reflect the granting of reciprocal privileges to aircraft of Guyana, paragraph (f) of section 10.59, Customs Regulations (19 CFR 10.59(f)), is amended by the insertion of "Guyana" in appropriate alphabetical order and the number of this Treasury Decision in the opposite column headed "Treasury Decision(s)," in the list of countries in that paragraph.

(Secs. 309, 317, 624, 46 Stat. 690, as amended 696, as amended, 759 (19 U.S.C. 1309, 1317, 1624)
(ADM–9–03)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved January 12, 1978:

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[Published in the FEDERAL REGISTER January 25, 1978 (43 FR 3358)]

(T.D. 78–29)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 17, 1978.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
January 2, 1978	Holiday
January 3, 1978	$0.2166
January 4, 1978	.2173
January 5, 1978	.2162½
January 6, 1978	.2165
Iran rial:	
January 2, 1978	Holiday
January 3, 1978	$0.0142
January 4, 1978	.0142
January 5, 1978	.0142
January 6, 1978	.0140

Philippines peso:	
January 2, 1978	Holiday
January 3, 1978	$0.1356
January 4, 1978	.1356
January 5, 1978	.1356
January 6, 1978	.1350
Singapore dollar:	
January 2, 1978	Holiday
January 3, 1978	$0.4203½
January 4, 1978	.4316
January 5, 1978	.4257
January 6, 1978	.4266
Thailand baht (tical):	
January 2, 1978	Holiday
January 3–6, 1978	$0.0490

(LIQ-3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 78-30)

Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 17, 1978.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 78-25 for the following country. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Switzerland franc:
January 5, 1978 ..... $0.4895

(LIQ-3)

JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 78-31)

Customs Service Decision

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C. January 23, 1978.

The following is the substance of a recent decision made by the United States Customs Service where the issue involved is of sufficient general interest or importance to warrant publication in the Customs Bulletin.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Vessel repairs—dutiability of prepaid foreign repairs performed under a service contract made and prepaid in the United States

The Customs Service has been asked to rule on the dutiability under section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466), of prepaid foreign repairs that are performed on a vessel under a service contract made in the United States.

A shipowner installed a collision avoidance system on an American ship and purchased a service contract from an American company to cover the cost of repairing a malfunction in the system that might occur after the end of the system's warranty period. Under the terms of the service contract, the service company was responsible for the cost of any repair to the system, with certain exceptions. Consequently, unless the repair was one specifically excepted in the service contract, the shipowner would not receive a bill for its cost.

Under 19 U.S.C. 1466, the cost of any repairs done outside the United States on an American vessel is dutiable and must be declared when the vessel returns to the United States. Although 19 U.S.C. 1466 provides for the remission of duty in certain circumstances, the cost of any foreign repairs must be declared and an

entry made whether or not the duty is subject to remission. There is no provision in 19 U.S.C. 1466 which would result in the remission of duty on the cost of the repairs solely because the cost was paid or prepaid in the United States.

Decided, the cost of repairing the collision avoidance system outside the United States under such a prepaid service contract would not be exempt from duty. The cost of any repairs performed in a foreign country must be declared and entered as required under 19 U.S.C. 1466 and section 4.14 of the Customs Regulations (19 CFR 4.14). If the cost of the repairs is not available, duty would be assessed on the cost of the service contract.

J. P. TEBEAU
Director,
Carriers, Drawback and Bonds Division.

(T.D. 78-32)

Countervailing Duties—Non-rubber Footwear From Uruguay

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, as amended, by reason of payment or bestowal of a bounty or grant upon the manufacture, production or exportation of non-rubber footwear from Uruguay.

TREASURY DEPARTMENT,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 159 — LIQUIDATION OF DUTIES

AGENCY: United States Customs Service, Treasury Department.
ACTION: Preliminary and Final Countervailing Duty Determination.
SUMMARY: This notice is to advise the public that an investigation has resulted in a determination that the Government of Uruguay has provided benefits considered to be bounties or grants within the meaning of the countervailing duty law to manufactures who export non-rubber footwear to the United States. However, countervailing duties are being waived, based upon the criteria established by the Trade Act of 1974, including actions taken and to be taken by the Government of Uruguay to reduce significantly the bounty or grant.
EFFECTIVE DATE: January 30, 1978.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane, Operations Officer, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229, telephone (202) 566–5492.

SUPPLEMENTARY INFORMATION: On September 1, 1977, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (42 FR 45977). The notice stated that a petition had been received alleging that the payments or bestowals conferred by the Government of Uruguay upon the manufacture, production or exportation of non-rubber footwear constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

On December 7, 1977, the Treasury indicated its intention to waive countervailing duties against non-rubber footwear imports from Uruguay based on certain steps the Government of Uruguay planned to take to reduce significantly and relatively quickly the effective bounty or grant that was found to exist (42 FR 61908). Interested parties were given a period of 15 days in which to submit written views on this proposed action.

The non-rubber footwear specified in the petition is classified under items 700.05 through 700.85 inclusive of the Tariff Schedules of the United States Annotated (TSUSA), except items 700.28, 700.51, 700.52, 700.53, 700.54 and 700.60.

On the basis of an investigation conducted pursuant to section 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it has been determined that benefits have been received by Uruguayan manufacturers/exporters of non-rubberfoot wear which constitute payment or bestowal of a bounty or grant within the meaning of the Act. These benefits have been conferred under the following programs:

1) The granting of tax certificates, known as "reintegros", to manufacturers of non-rubber footwear, upon the exportation of the goods;

2) Income tax exemptions on certain export-related income; and

3) Preferential financing for exports.

The rebate of value-added taxes upon export of goods and the rebate of import duties paid on raw materials used in the production of non-rubber footwear for export have been determined not to constitute bounties or grants within the meaning of the Act.

Programs found not to have been utilized by the non-rubber footwear industry include government-sponsored export insurance, a tax holiday for new industries and benefits for locating within certain free ports and zones. These are, therefore, not addressed by this Determination.

The payment granted to the tanners upon the export of non-rubber footwear does constitute a bounty or grant within the meaning of the Act. Based on the information available, however, the tanners' subsidy serves only to make tannery prices for hides in Uruguay equal to hides sold in neighboring countries, which are readily available to non-rubber footwear manufactures in Uruguay. The net amount of this bounty, therefore, is zero, since the cost of producing non-rubber footwear absent the subsidy would not be increased if non-rubber footwear producers merely shifted their sources of supply to neighboring countries.

In addition, the net effect of the principal export subsidy found is offset by certain fiscal charges which are indirect taxes directly related to the exported footwear. These taxes are not rebated upon export; however, they could be rebated without being considered a "bounty" or "grant" under the Act as consistently interpreted by the Treasury Department. Thus, these unrebated taxes act to reduce the effective export benefit. Such indirect taxes include:

1) export taxes charged on the value of the non-rubber footwear exported, plus a tax on the value of the export rebate certificates;

2) value-added taxes that are charged in manufacturing the exported non-rubber footwear (The Government of Uruguay generally rebates 75 percent of the value-added taxes paid);

3) taxes on agricultural transactions which in this case involve a 4-percent tax on the value of hides purchased by tanners; and

4) import taxes and other special taxes which are assessed in the non-leather items of the footwear.

Finally, the effective export benefit is reduced due to a regular devaluation of the peso to the dollar since the certificate tendering the benefit is not received before 90 days after application has been made for it.

After consideration of all the information received, it is hereby determined that the subject non-rubber footwear from Uruguay receive bounties or grants within the meaning of the Act. The bounties or grants are in the form of the payments referred to in this Notice, taking into account the offsets described.

This notice combines the preliminary and final countervailing duty determinations required under section 303 of the Act.

Accordingly, notice is hereby given that dutiable non-rubber footwear, imported directly or indirectly from Uruguay, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act, until further notice the net amount of such bounties or grants has been estimated and declared to be 23 percent of the f.o.b. price for export to the United States of non-rubber footwear from Uruguay.

Effective on or after the date of publication of this notice in the FEDERAL REGISTER and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable non-rubber footwear imported directly or indirectly from Uruguay, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of non-rubber footwear from Uruguay are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation.

Notwithstanding the above, a "Notice of Waiver of Countervailing Duties" is being published concurrently with this order which covers non-rubber footwear from Uruguay subject to this investigation in accordance with section 303(d) of the Act. At such time as the waiver ceases to be effective, in whole or in part, a notice will be published setting forth the deposit of estimated countervailing duties which will be required at the time of entry, or withdrawal from warehouse, for consumption of each product then subject to the payment of countervailing duties.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country", the name "Uruguay", and inserting the words "Non-rubber footwear" in the column headed "Commodity", the number of this Treasury Decision in the column headed "Treasury Decision", and the words "bounty-declared rate" in the column headed "Action".

(R.S. 251, as amended secs. 303, as amended, 624, 46 Stat. 687, 759 19 U.S.C. 66, 1303, 1624).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 14, July 1, 1977, the provisions of Treasury Department Order No. 165, Revised November 2, 1954, and section 159.47(d) of the Customs Regulations (19 CFR 159.47(d)), insofar as they pertain to the issuance of a countervailing duty order by the Commissioner of Customs, are hereby waived.

253-872—78——3

Dated January 24, 1978:

ROBERT H. MUNDHEIM,
General Counsel of the Treasury,

[Published in the FEDERAL REGISTER January 30, 1978 (43 FR 3906)]

(T.D. 78-33)

Countervailing Duties—Leather Handbags From Uruguay

Notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, as amended, by reason of payment or bestowal of a bounty or grant upon the manufacture, production or exportation of leather handbags from Uruguay

TREASURY DEPARTMENT,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER 1—UNITED STATES CUSTOMS SERVICE

PART 159 — LIQUIDATION OF DUTIES

AGENCY: United States Customs Service, Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This notice is to advise the public that an investigation has resulted in a determination that the Government of Uruguay has provided benefits considered to be bounties or grants within the meaning of the countervailing duty law to manufacturers who export leather handbags to the United States. However, countervailing dutes are being waived, based upon the criteria established by the Trade Act of 1974, including the actions taken and to be taken by the Government of Uruguay to reduce significantly the bounty or grant.

EFFECTIVE DATE: January 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Vincent P. Kane, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: On December 7, 1977, a "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (42 FR 61908).

The notice stated that it had been determined preliminarily that benefits had been received by the Uruguayan manufacturers/exporters of leather handbags which may constitute bounties or grants within

the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act"). The benefits preliminarily determined to be bounties or grants were:

(1) Income tax exemptions on certain export related income;

(2) Preferential financing for export; and

(3) The granting of tax certificates, known as "reintegros," upon exportation of the goods.

The rebate of value added taxes upon export of goods and the rebate of import duties paid on raw materials used in the production of leather handbags for export were determined not to constitute a bounty or grant within meaning of the Act.

The handbags subject to this determination are classified under item number 706.0820 of the tariff schedules of the United States as leather handbags, other than reptile. The term "handbags" as used in the petition covers "pocketbooks, purses, shoulder bags, clutch bags, and all similar articles by whatever name known, customarily carried by women or girls, but not including luggage or flatgoods."

Programs found not to have been utilized by the leather handbag industry include government sponsored export insurance, a tax holiday for new industries and benefits for locating within certain free ports and zones. These are, therefore, not addressed by this Determination.

The Tentative Determination also indicated that it was the Treasury's intention to waive countervailing duties based on steps by the Uruguayan government to reduce significantly and relatively quickly the effective bounty or grant that was found to exist. However, before a Final Determination was to be made, consideration would be given to any relevant data, views, or arguments submitted in writing within 15 days from the date of publication of the Preliminary Determination.

Based on additional information received and considered, it is hereby determined that the payment granted to the tanners upon the export of the finished handbags does constitute a bounty or grant within the meaning of the Act. Based on the information available, however, the tanners subsidy serves only to make tannery prices for hides in Uruguay equal to hides sold in neighboring countries which are readily available to handbag manufacturers in Uruguay. The net amount of this bounty is, therefore, zero, since the cost of producing handbags, absent the subsidy, would not be increased if handbag producers merely shifted their sources of supply to neighboring countries.

In addition, the net effect of the principal export subsidy found is offset by certain fiscal charges which are indirect taxes directly related to the exported leather handbags. These taxes are not rebated upon export; however, they could be rebated without being considered a "bounty" or "grant" under the Act as consistently interpreted by the Treasury Department. Thus, these unrebated taxes act to reduce

the effective export benefit. Such indirect taxes include: (1) Export taxes charged on the value of the handbags exported, plus a tax on the value of the export rebate certificate; (2) Value added taxes that are charged in manufacturing the exported handbags, (the Government of Uruguay generally rebates 75 percent of the value added taxes paid); (3) Taxes on agricultural transactions which in this case involve a 4 percent tax on the value of hides purchased by tanners; and (4) Import taxes and other special taxes which are assessed on the non-leather items of the handbag.

Finally, the effective export benefit is reduced through a regular devaluation of the peso to the dollar since the certificate tendering the benefit is not received before 90 days after application has been made for it.

After consideration of all the information received, it is hereby determined that the subject leather handbags from Uruguay receive bounties or grants within the meaning of the Act. The bounties or grants are in the form of the payments referred to in the Preliminary Determination, taking into account the offsets described in this Notice.

Accordingly, notice is hereby given that dutiable leather handbags, imported directly or indirectly from Uruguay, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act, until further notice the net amount of such bounties or grants has been estimated and declared to be 17.4 percent of the f.o.b. price for export to the United States of leather handbags from Uruguay.

Effective on or after the date of publication of this notice in the FEDERAL REGISTER and until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable leather handbags imported directly or indirectly from Uruguay, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of leather handbags from Uruguay are subject to a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has

been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation.

Notwithstanding the above, a "Notice of Waiver of Countervailing Duties" is being published concurrently with this order which covers leather handbags from Uruguay subject to this investigation in accordance with section 303(d) of the Act. At such time as the waiver ceases to be effective, in whole or in part, a notice will be published setting forth the deposit of estimated countervailing duties which will be required at the time of entry, or withdrawal from warehouse, for consumption of each product then subject to the payment of countervailing duties.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country", the name "Uruguay" and by inserting the words "leather handbags", in the column headed "Commodity," the number of this Treasury Decision in the column headed "Treasury Decision," and the words "Bounty Declared-Rate" in column headed "Action."

(R.S. 251, as amended, secs. 303, as amended, 624, 46 Stat. 687, 759; 19 U.S.C. 66, 1303, 1624).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 14, July 1, 1977, the provisions of Treasury Department Order No. 165, Revised November 2, 1954 and section 159.47(d) of the Customs Regulations (19 CFR 159.47(d)), insofar as they pertain to the issuance of a countervailing duty order by the Commissioner of Customs, are hereby waived.

Dated January 24, 1978:

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the FEDERAL REGISTER January 30, 1978 (43 FR 3904)]

(T.D. 78-34)

Waiver of Countervailing Duties—Non-Rubber Footwear and Handbags from Uruguay

Determination under section 303(d), Tariff Act of 1930, as amended, to waive countervailing duties

DEPARTMENT OF THE TREASURY,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

253-872—78——4

PART 159 – LIQUIDATION OF DUTIES

AGENCY: Department of the Treasury.

ACTION: Waiver of Countervailing Duties.

SUMMARY: This notice is to inform the public that a determination has been made to waive countervailing duties that would otherwise be required by section 303 of the Tariff Act of 1930 on imports of non-rubber footwear and handbags from Uruguay. The waiver is being issued based on actions by the Government of Uruguay to phase out the effective export subsidy on these items. The waiver will expire on January 4, 1979 unless revoked earlier.

EFFECTIVE DATE: January 30, 1978.

FOR FURTHER INFORMATION CONTACT: Richard B. Self, Office of Tariff Affairs, U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C. (202–566–8585).

SUPPLEMENTARY INFORMATION: In T.D.'s 78–32 and 78–33, published concurrently with this determination it has been determined that bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), are being paid or bestowed directly or indirectly upon the manufacture, production or exportation of non-rubber footwear and handbags from Uruguay.

Section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (Pub. L. 93–618, January 3, 1975), authorizes the Secretary of the Treasury to waive the imposition of countervailing duties during the four-year period beginning on the date of enactment of the Trade Act of 1974 if he determines that:

(1) Adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(2) There is a reasonable prospect that under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(3) The imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Based upon analysis of all the relevant factors and after consultations with interested agencies and parties with direct interest in this proceeding, I have concluded that steps have been taken to reduce substantially the adverse effects of the bounty or grant. Specifically the

Government of Uruguay is committed toward the total removal of the net bounty derived from the tax rebate certificate program (reintegro) (or any equivalent or comparable benefit) on all leather products, except tanned leather as such, to all export markets between January 1, 1978 and January 1, 1979. Such elimination will be staged according to the following schedule: 50-percent reduction by January 1, 1978 (such reduction took place December 28, 1977); 50-percent reduction of the remaining balance on or before July 1, 1978; and total elimination of any remaining subsidy on or before January 1, 1979.

The waiver is conditioned further that the Government of Uruguay will proceed with its previously stated decision to eliminate the reintegro (or equivalent) for all exports from Uruguay on or before January 1, 1983.

The issuance of this waiver of countervailing duties would not inhibit in any way the right of the U.S. Government to take appropriate actions in the event that future imports of non-rubber footwear and handbags from Uruguay were having a disruptive effect on U.S. industry.

After consulting with appropriate agencies, including the Department of State, the Department of Labor, the Department of Commerce, and the Office of the Special Representative for Trade Negotiations, I have further concluded (1) That there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and (2) That the imposition of countervailing duties on non-rubber footwear and handbags from Uruguay would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Accordingly, pursuant to section 303(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(d)), I hereby waive the imposition of countervailing duties as well as the suspension or liquidation ordered in T.D.'s 78–32 and 78–33, on non-rubber footwear and handbags from Uruguay.

This determination may be revoked, in whole or in part, at any time and shall be revoked whenever the basis supporting such determination no longer exists. Unless sooner revoked or made subject to a resolution of disapproval adopted by either House of the Congress of the United States pursuant to section 303(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(e)), this waiver of countervailing duties will, in any event, by statute cease to have force and effect on January 4, 1979.

On or after the date of publication in the FEDERAL REGISTER of a notice revoking this determination in whole or in part, the day after

the date of adoption by either House of Congress of a resolution disapproving this "Waiver of Countervailing Duties", or January 4, 1979, whichever occurs first, countervailing duties will be assessable on non-rubber footwear and handbags imported directly or indirectly from Uruguay in accordance with T.D.'s 78–32 and 78–33, published concurrently with this determination.

The table in section 159.47(f) of the Customs Regulations (19 CFR section 159.47(f)) is amended by inserting after the last entry from Uruguay under the commodity headings "Non-rubber footwear" and "Handbags" the number of this Treasury Decision in the column heading "Treasury Decision", and the words "Imposition of countervailing duties waived" in the column headed "Action".

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2051, 2052; 19 U.S.C. 66, 1303, as amended, 1624.)

Dated January 24, 1978:

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[Published in the FEDERAL REGISTER January 30, 1978 (43 FR 3904)]

U.S. Customs Service

Proposed Rulemaking

The following notice of proposed rulemaking was recently published in the FEDERAL REGISTER. The Customs Service welcomes comments from the public in regard to the proposal. The comments must be in writing, addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, 1301 Constitution Ave., N.W., Washington, D.C. 20229, and must be received on or before the date specified in the notice.

ROBERT E. CHASEN,
Commissioner of Customs.

(19 CFR Part 22)

Drawback

Proposed amendments to the Customs Regulations relating to drawback rates

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes that the Customs Regulations be amended to provide that drawback rates shall expire 15 years after issuance or approval unless renewed by the rate holder. Also proposed is that applications for drawback rates will be considered abandoned if supporting drawback statements are not filed within one year of receipt of the application. Customs is currently required to maintain files consisting of obsolete rates and/or applications. The changes are proposed so that Customs may dispose of these obsolete files.

DATES: Comments must be received on or before February 23, 1978.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Donald Beach, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202–566–5856).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The term "drawback" refers to a situation in which a duty or tax, lawfully collected, is refunded because of a particular use made of the merchandise on which the duty or tax was collected. One of the more common types of claims for drawback is when articles manufactured or produced in the United States with the use of imported merchandise are exported (section 313(a), Tariff Act of 1930 (19 U.S.C. 1313(a))). Part 22 of the Customs Regulations (19 CFR Part 22) contains the provisions regarding drawback claims.

Section 22.3 of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with benefit of drawback shall make application for the establishment of a rate of drawback prior to the exportation of these articles. Section 22.3(c) provides that the manufacturer or producer may abandon his application for the establishment of a rate of drawback by filing a written statement to that effect addressed to the district director with whom the application was filed or to the Customs investigating officer. In practice, however, applicants who have abandoned applications for drawback rates rarely file such a statement. As a result, many abandoned applications are still on file with Customs. Therefore, for Customs to remove obsolete applications from its files, it is proposed to amend section 22.3(c) to provide that applications shall be considered abandoned if supporting drawback statements, required by section 22.4(h) of the Customs Regulations, are not filed within one year of receipt of the application.

Section 22.4 of the Customs Regulations also provides for the establishment of drawback rates. Currently, established drawback rates remain in effect indefinitely. As a result, Customs maintains files of established drawback rates which frequently have become obsolete. It is proposed to amend section 22.4 to provide that drawback rates will expire after a period of 15 years, unless they are renewed by the rate holder.

If the proposed amendments are adopted, Customs will notify holders of drawback rates of this new procedure. Holders of rates less than 15 years old will be advised that they may renew the rates merely by submitting a request to do so, prior to the expiration of the 15-year period, to the regional commissioner where their drawback

entries have been liquidated. Holders of drawback rates now more than 15 years old will be given 30 days from the date of the notice to renew their rates.

This document also proposes to amend sections 22.4(o) and 22.6 (a) and (c) to conform the language in those sections to the other amended sections, and to simplify the language. No substantive changes to sections 22.4(o) and 22.6 (a) and (c) are intended.

COMMENTS

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Richard M. Belanger, Attorney, Regulations and Legal Publications Division of the Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in developing this document, both on matters of substance and style.

PROPOSED AMENDMENTS

It is proposed to amend Part 22 of the Customs Regulations (19 CFR Part 22) in the following manner:

PART 22 — DRAWBACK

It is proposed to amend section 22.3(c) to read as follows:

§ 22.3 Application for establishment of drawback rate.

* * * * *

(c) *Abandonment of rates.* The manufacturer or producer may abandon his application for the establishment of a rate of drawback by filing a written statement to that effect with the Customs officer with whom the application was filed. An application shall be considered abandoned if supporting drawback statements are not filed within one year of receipt of the application. An abandoned application may not be revived to give an earlier effective date to a rate of drawback established as the result of subsequent application.

It is proposed to amend paragraph (o) of section 22.4 and add a new paragraph (r) as set forth below:

§ 22.4 Identification of imported merchandise and ascertainment of quantities for allowance of drawback; establishment of drawback rates; expiration of drawback rates.

* * * * *

(o)(1) *Amendment of rates.* When a manufacturer or producer having a drawback rate desires to have the rate amended under section 313(a), Tariff Act of 1930, or to change a drawback statement filed under section 22.6, he shall submit a revised drawback statement to the regional commissioner who issued the rate. If warranted, the regional commissioner shall issue an amended rate and revoke the superseded rate in the same action. This procedure also shall apply to amendments of the other rates set forth in paragraph (h) of this section. The revised drawback statement shall be submitted to Headquarters, U.S. Customs Service, except as provided in paragraph (o)(2). No drawback shall be allowed on articles exported before the date on which the applicant's first application still in effect was received by the appropriate Customs officer.

(2) A revised drawback statement requesting an amendment under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, shall be submitted to the regional commissioner for action in accordance with paragraph (o)(1), provided the changes covered by the amendment are limited to—

(i) A change in location of the factory of the manufacturer or producer;

(ii) An additional factory at which the methods followed and the records maintained are the same as those at another factory operating under an existing drawback rate of the manufacturer or producer;

(iii) A change in name of the manufacturer or producer;

(iv) The succession of a sole proprietorship, partnership, or corporation to the operations of the manufacturer or producer; or

(v) Any combination of the foregoing changes.

* * * * *

(r) *Expiration, revocation, or renewal of rates.*

(1) Unless renewed by the rate holder in accordance with paragraph (r) (3), drawback rates issued under this section, or contained in statements approved under section 22.6, shall expire 15 years from the date of issuance or approval, as applicable, provided such date is on or after (*effective date of this rule*).

(2) If the dates of issuance or approval are before (*effective date of this rule*), an appropriate Customs officer shall notify the rate holder in writing of the provisions of this paragraph. Unless renewed by the

rate holder in accordance with paragraph (r) (3), such rate shall expire the later of:

(i) 15 years from the date of issuance or approval, as applicable, or

(ii) 30 days from the date of the notice to the rate holder.

(3) A rate holder may renew its rate by submitting a request in writing, prior to the expiration of the rate, to each regional commissioner where drawback entries filed under the rate have been liquidated. The rate shall be renewed for a succeeding 15-year period upon receipt of the request.

(4) A rate will be revoked if the rate holder specifically requests revocation in writing to the appropriate Customs Officer.

It is proposed to amend paragraphs (a) and (c) of section 22.6 to read as follows:

§ 22.6 General drawback rates in effect; approval of drawback statements by Headquarters, U.S. Customs Service, and by regional commissioners.

(a) *Drawback statements; filing and approval by one regional commissioner.* Each manufacturer or producer of articles covered by a drawback rate in this section, except under paragraph (g–1), shall submit to the regional commissioner where drawback entries will be filed a drawback statement, in duplicate, describing the methods used in the manufacture or production of the products involved. The statement also shall set forth the records it agrees to keep for the purpose of complying with the drawback law and regulations and for providing all the data required for the proper liquidation of entries. If the statement provides for compliance with the rate, the regional commissioner shall approve the drawback statement and promptly notify the applicant in writing of the action. Drawback statements, in triplicate, relating to products covered by paragraph (g)(1) shall be forwarded to Headquarters, U.S. Customs Service for approval.

* * * * *

(c) *Drawback statements; revised.* Revised drawback statements covering changes in drawback statements filed under this section shall be handled in accordance with the provisions of paragraphs (a) and (b) of this section.

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved January 3, 1978:
BETTE B. ANDERSON,
Under Secretary of the Treasury.

[Published in the FEDERAL REGISTER January 24, 1978 (43 FR 3286)]

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4728)

A. N. DERINGER, INC. *v.* UNITED STATES

Articles of asbestos

Importations of a mixture of asbestos, calcined magnesite and epsom salts claimed to be asbestos, not manufactured, or asbestos crudes or fibers under item 518.11 TSUS or articles in part of asbestos and hydraulic cement under item 518.44 TSUS *held* properly classified as articles not specially provided for of asbestos under item 518.51 TSUS.

The claim for asbestos, not manufactured, is based on the principle that an *eo nomine* designation without terms of limitation or contrary legislative intent, judicial decision or administrative practice includes all forms of the article. See *Nootka Packing Co.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935); *Crosse &*

Blackwell Co. v. *United States*, 36 CCPA 33, C.A.D. 393 (1948); *T. M. Duche & Sons, Inc.* v. *United States*, 44 CCPA 60, C.A.D. 638 (1957).

Item 518.11 *supra* does not provide for asbestos without limitation. It includes five forms of asbestos. In addition, it has been judicially determined that asbestos mixed with paper pulp is not asbestos unmanufactured. *R. F. Lang* v. *United States*. 22 Treas. Dec. 901, Abs. 28666, T.D. 32560 (1912).

By virtue of classification under item 518.51 *supra* there is a presumption that the imported product is in chief value of asbestos by virtue of general headnote 9(f)(i). The classification does not carry with it the presumption that the imported merchandise is asbestos not manufactured or asbestos fibers.

Asbestos in grade 7 under the Quebec Asbestos Mining Association standards, which the legislative history establishes are widely recognized in the United States, is considered asbestos shorts or asbestos sand and refuse. It is not considered asbestos crudes.

Classification under the provision for asbestos sand and refuse is excluded since the imported merchandise contains more than the 15 percent by weight of foreign material prescribed by the statute.

The imported merchandise does not fall within the statutory terms as established by the record and legislative history.

The combination of the components results in an oxysulfate cement which is not included within the meaning of hydraulic cement.

Court No. 72-2-00281

Port of Ogdensburg

[Judgment for defendant.]

(Decided January 12, 1978)

Barnes, Richardson & Colburn (*Joseph Schwartz* of counsel) for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*John J. Mahon*, trial attorney), for the defendant.

FORD, Judge: Plaintiff instituted this action in an effort to obtain more favorable tariff treatment of certain importations of asbestos mixed with caustic calcined magnesite (magnesium oxide), referred to as part A, and epsom salts (magnesium sulfate), referred to as part B. The merchandise was classified under item 518.51, Tariff Schedules of the United States, as modified by T.D. 68-9, as articles not specially provided for of asbestos and consequently was assessed with duty at the rate of 6% ad valorem or 5% ad valorem, depending upon the date of entry.

The importer contends the merchandise is entitled to entry free of duty under item 518.11, Tariff Schedules of the United States, which provides for various forms of asbestos. Alternatively, it is contended if not free of duty it is dutiable at 0.15¢ per pound or 0.1¢ per pound, depending upon the date of entry, under item 518.44, Tariff Schedules of the United States, as modified by T.D. 68–9, as other articles in part of asbestos and hydraulic cement.

The pertinent statutory provisions provide as follows:

Subpart F. – Asbestos and Asbestos Products

518.11	Asbestos, not manufactured, asbestos crudes, fibers, and stucco, and asbestos sand and refuse containing not more than 15 percent by weight of foreign matter	Free
	* * * * * * *	
	Articles in part of asbestos and hydraulic cement:	
	* * * * * * *	
518.44	Other	0.15¢ or 0.1¢ per lb. [depending upon date of entry]
	* * * * * * *	
518.51	Articles not specially provided for, of asbestos	6% or 5% ad val. [depending upon date of entry]

The record consists of the testimony of three witnesses called on behalf of plaintiff and four on behalf of defendant. In addition, plaintiff introduced 13 exhibits and defendant offered two exhibits.

The asbestos involved in the imported merchandise was produced by Carey-Canadian Mines, Ltd., hereinafter referred to as Carey-Canadian, by mining and crushing, after which the fibers were separated by a process called aspiration and then screened according to size. Asbestos is sold and priced according to the length of the fibers. The longest fibers are either crude No. 1 or crude No. 2 and are the most expensive. The shorter fibers which are graded under the specifications of the Quebec Asbestos Mining Association range from grades 3 through 7. The asbestos used in the imported product was grade 7 which Carey-Canadian designated as 7M90. This grade is known as "shorts" rather than crudes and might also be considered as asbestos sand and refuse. The calcined magnesite and the magnesium

sulfate were purchased by Carey-Canadian for use with the imported merchandise.

Universal Fire-Bar, Inc., the United States purchaser, set the specifications for the merchandise involved. This company also designs and builds machinery such as automatic water dispensers, foam generators, pumps, and pole guns with external atomization nozzles which allow the product to be sprayed on a steel surface for use as fireproofing. The purpose is to prevent the steel from losing its structural strength resulting from a fire. The imported product has no use in its dry state. It must be combined with a foaming agent and water before spraying. The imported product is not used where it would be exposed to the elements such as rain.

Defendant's exhibit A, a copy of ASTM publication C 219–66, entitled *Standard Definitions of Terms Relating to Hydraulic Cement*, defines the term hydraulic cement as "a cement that is capable of setting and hardening under water due to interaction of water and the constituents of the cement." Witnesses Sztuke, Sporn, Seward, Pollock, Libel and Redeker all agreed with the foregoing definition.

The term "set" in the definition was generally agreed by the witnesses to mean the ability of the materials to assume a shape, while the term "hardness" means the ability to resist change or distortion under pressure or force. The test for setting requires the use of a needle such as a "Westvaco." This is applied to the surface of the material and when the needle no longer leaves an impression, the material is considered set. Hardening, on the other hand, is tested in a compression machine which determines the amount of force necessary to break or fracture the material. Hydraulic cement must have both of these capabilities.

Plaintiff's exhibit 5, a laboratory report, indicates the samples were submerged in water for 68 hours (tests 2 and 4) and the product in test 2 remained spongy and plastic. Test 4 of said exhibit indicates a certain amount of granulation when the surface of the sample is rubbed. Notwithstanding the pliability, witness Sztuke considered the imported merchandise to be a borderline hydraulic cement since it "sets under water."

Plaintiff's witness Libel described various tests he conducted on portland cement and on samples of combinations of caustic calcined magnesite and epsom salts and he concluded that both were hydraulic cement.

Tests performed by Mr. Sporn, branch chief at the New York Customs Laboratory, and defendant's witness Redeker, western regional manager for Industrial Magnesia Corp., on samples of the

imported mechandise or the same mixture indicated the samples that were allowed to set and harden in the air became hard and rocklike, while those that were immersed in water immediately after forming a patty did not harden, were easily abraded or remained in a puttylike consistency. In their opinion the imported merchandise was not a hydraulic cement. Mr. Redeker testified that he was a technical adviser for the committee of the ASTM which put out the specifications for the ingredients used in oxysulfate and oxychloride cements. Defendant's exhibit B, which is ASTM designation C 376–58 and entitled *Standard Definitions of Terms Relating to Magnesium Oxychloride and Magnesium Oxysulfate Cements*, was identified by the witness. The imported merchandise is an oxysulfate cement. According to Mr. Redeker, magnesium oxychloride cement and oxysulfate cement are used for fireproofing and other uses with binders of asbestos and other material. They are not water resistant.

Hydraulic cement, according to the witness, is a cement which when mixed with water will set and harden under water. Neither oxysulfate nor oxychloride cements are hydraulic cements because they will not suitably set or harden under water. Caustic calcined magnesite, plus epsom salts and water, would not result in a hydraulic cement.

The witness further testified that other cements which are not hydraulic are gypsum cements, plaster of paris and Keene's cement. The most common hydraulic cement according to witnesses Redeker and Pollock is portland cement, others being portland-pozzolan cement, slag cement, portland blast-furnace slag cement and oil well cement. Magnesium oxysulfate cement is not water resistant and cannot be used in asbestos cement, pipe or products intended to carry water in cesspools, in the ground, or where water or excessive moisture would be a factor.

The merchandise involved, imported in 63-pound bags, consists of 50 pounds of chrysotile asbestos fibers, grade 7M90 (79% by weight), 7 pounds of part A, caustic calcined magnesite (11% by weight) and 6 pounds of part B, epsom salts (9% by weight). The addition of parts A and B were as binding agents. The mixture of the three components was accomplished during the shipment where the natural movement of the bags caused the various components to mix. The use of the imported mixture, after being combined with a water and foaming agent, is to spray it on internal steel to prevent its losing structural strength as the result of a fire.

Plaintiff's contention, notwithstanding the mixture with parts A and B, is that the imported merchandise is asbestos unmanufactured. This position is based upon the principle that an *eo nomine* designation without limitation or contrary legislative intent, judicial decision,

or administrative practice, and without proof of commercial designation, includes all forms of the article. See *Nootka Packing Co.* v. *United States*, 22 CCPA 464, T.D. 47464 (1935); *Crosse & Blackwell Co.* v. *United States*, 36 CCPA 33, C.A.D. 393 (1948); *T. M. Duche & Sons, Inc.* v. *United States*, 44 CCPA 60, C.A.D. 638 (1957).

The court is well aware of this principle. However, plaintiff's reliance thereon is misplaced. Initially, item 518.11 *supra* does not provide for asbestos without limitation. Said item provides for five forms of asbestos. In addition, the case of *R. F. Lang* v. *United States*, 22 Treas. Dec. 901, Abs. 28666, T.D. 32560 (1912) held that asbestos mixed with paper pulp is not "asbestos, unmanufactured," as provided for in paragraph 501, Tariff Act of 1909, but is a nonenumerated manufactured article under paragraph 480 of said act.

The classification under item 518.51 *supra* carries with it the presumption that it is in chief value of asbestos by virtue of general headnote 9(f)(i). Said headnote defines "of" as used in the Tariff Schedules of the United States to mean wholly or in chief value of the named material. Said classification does not, however, carry with it the presumption that the imported merchandise is asbestos not manufactured or asbestos fibers as contended by plaintiff. On the contrary, the presumption resulting from the classification is to the effect that the imported merchandise is not asbestos unmanufactured or asbestos fibers.

The balance of the claim for free entry under item 518.11 *supra*, as set forth in the complaint filed herein, are asbestos crudes, asbestos fibers, or asbestos shorts, which the record establishes is within the same category as asbestos sand and refuse. Since there has been no attempt by either party to establish a commercial designation, the common meaning of the terms are considered controlling.

It is interesting to note the following information contained in the Summaries of Trade and Tariff Information (1969), Schedule 5, Volume 1, page 160:

> Commercial asbestos is divided into: (1) asbestos crudes, (2) milled asbestos fibers, and (3) asbestos sand and refuse. "Crudes" is a trade term applied to fibers of spinning grade, measuring three-eights of an inch or longer, that are hand cobbed (cleaned of waste material with a hammer) without being passed through a mill for fiberizing. * * *
>
> Unmanufactured asbestos is marketed by groups rather than as a single product. Groups of asbestos are principally governed by the length of the fiber. Each length has different characteristics and thus has different applications. Longer fibers command higher prices, and prices are progressively lower for shorter grades, although openness, tensile strength, absorption, and other qualities of the fibers are also taken into consideration.

> There is no standard uniform group classification of asbestos in commerce, and the various producing companies and countries adopt their own groupings. The specifications of the Quebec Asbestos Mining Association, whose grades are determined by mechanical sieving (using the Quebec Testing Machine), are widely accepted in the United States. According to the Quebec Asbestos Mining Association, the crudes and spinning fibers comprise group 1, 2, and 3. Group 4 is designated as shingle fiber; group 5, paper fiber; group 6, waste, stucco or plaster; and group 7, refuse or shorts.

Additionally, the Tariff Classification Study (1960), Schedule 5, part 1, at page 30 refers to the limitations imposed on asbestos sand and refuse as follows:

> In item 518.11 an effort has been made to clarify without change of scope the existing language of paragraph 1616. The qualification "containing not more than 15 percent by weight of foreign matter" is intended to apply only to asbestos sand and refuse and the rewritten provision makes this clear.

Since the record establishes the asbestos is grade 7M90 it is apparent from the foregoing that it could not fall within the categories of asbestos crudes or asbestos fibers.

The last claim under item 518.11 *supra* is also clearly eliminated due to the limitation of "15 percent by weight of foreign matter." As indicated *supra* the involved merchandise contains 20 percent by weight of matter other than asbestos.

The alternative claim of plaintiff under item 518.44 *supra* as an article in part of asbestos and hydraulic cement has commanded most of the record testimony and exhibits. The Tariff Classification Study *supra*, page 30, contains the following information regarding plaintiff's alternative claim:

> The language "in part of asbestos and hydraulic cement" reduces to simple terms the actual meaning of the language "in part of asbestos, if containing hydraulic cement or hydraulic cement and other material". The "in part of" concept in this provision has been retained as it is not likely to produce anomalous classification results. Any product which contains a commercially significant quantity of asbestos and hydraulic cement is appropriately classified within this provision. In practice, goods in this classification generally do not have less than 10 percent by weight of asbestos.

The Summaries of Trade and Tariff Information *supra*, page 173, contains the following information on articles of asbestos and hydraulic cement:

> Portland cement and asbestos fibers are used in combination in a great variety of building materials to produce products having weather and fire resistant properties. In a wet state, this material can be molded into almost any desired shape. When dry,

it is rigid, strong, and durable. The ratio of asbestos fibers to cement in such products varies from 15 to 25 percent, depending on the length and class of the fibers used and the product being made. Chrysotile asbestos is the principal fiber used in making asbestos cement products. Crocidolite is sometimes used, but in small amounts because of its low strength; amosite fiber is rarely, if ever, used for such purposes. A product which contains a commercially significant quantity of "asbestos and hydraulic cement" is "in part" of such materials and unless more specifically provided for elsewhere in the TSUS is covered by this summary.

Asbestos cement products are particularly useful in industrial buildings and private housing. Principal products made from asbestos cement are shingles, roofing, siding, flat and corrugated sheets, wallboard, and pipes. Asbestos cement pipes are manufactured for use in the construction of sewage and water systems.

Based upon the foregoing and the record as made, the issue with respect to this claim is whether parts A and B are hydraulic cement. The record establishes that the combination of parts A and B results in a magnesium oxysulfate cement. This combination, plaintiff contends, based upon tests performed, results in a hydraulic cement.

The definition of hydraulic cement, as set forth in ASTM designation C 219–66, defendant's exhibit A, reads as follows:

> Hydraulic Cement—A cement that is capable of setting and hardening under water due to interaction of water and the constituents of the cement.

It is noted that this ASTM publication defines "Terms Relating to Hydraulic Cement." The single page (page 218) received in evidence lists five different types of hydraulic cement, i.e., natural cement, portland cement, portland blast-furnace slag cement, portland-pozzolan cement, and slag cement. Nowhere in the publication, defendant's exhibit A, is any reference made to magnesium oxysulfate cement. Defendant's exhibit B, ASTM designation C 376–58, relates to magnesium oxysulfate cement and magnesium oxychloride cement.

Hydraulic cement, as such, is provided for in item 511.11, Tariff Schedules of the United States. The Tariff Classification Study makes the following observation in schedule 5, part 1, page 19:

> The existing practice with respect to the tariff classification of concrete mixes under paragraph 205(d) apparently is confined to concrete mixes in which the cementing material is hydraulic cement. It would not seem to apply, for example, to a so-called bituminous concrete mix consisting essentially of asphalt or tar and a suitable aggregate. Also appearing in commerce are concrete products which have been made of mixes consisting of mineral aggregates cemented together with resins. Therefore, the final draft provides two rate provisions for concrete mixes, the first of which (item 511.21) covers the hydraulic cement concrete mixes referred to above and the second of which (item 511.25) covers other concrete mixes.

Similarly, caustic calcined magnesite, as such, is encompassed by item 522.64, Tariff Schedules of the United States, and the Summaries of Trade and Tariff Information (1968), Schedule 5, Volume 2, page 149, makes the following statement under the heading: "Description and uses":

> Caustic calcined magnesite is used chieffy in the manufacture of oxychloride and oxysulfate cements.

It is readily apparent the congressional intent in enacting item 518.44 *supra* was not to permit all asbestos combined with cement to be classified thereunder. Congress specifically provided for hydraulic cement. The record and legislative history establish to the satisfaction of the court that magnesium oxysulfate cement, when combined with asbestos, is not subject to classification under said provision.

Accordingly, the claims are overruled and the action is dismissed. Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *January 16, 1978.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P78/5	Maletz, J. January 9, 1978	Pacific Wood Products Co.	76-9-02063	Item 240.25 20%	Item 240.23 12%	Agreed statement of facts	Philadelphia Plywood
P78/6	Newman, J. January 9, 1978	U.S. Import Equipment Dist., Inc.	76-1-00141, etc.	Item 652.35 9.5% (items marked "A" and "B")	Item 652.15 6% (items marked "A") Item 652.18 6% (items marked "B")	Kelco Incorporated et al. v. U.S. (C.D. 3931); Border Brokerage Company et al. v. U.S. (C.D. 2947) (items marked "A" and "B")	Los Angeles Chain or chains, and parts thereof used for transmission of power (items marked "A" and "B")

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/3	Watson, J. January 9, 1978	Given Machinery et al.	R68/11145, etc.	Cost of production	Invoiced unit prices, f.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4624)	Los Angeles Lathes
R78/4	Watson, J. January 9, 1978	Given International, Inc.	R68/17494, etc.	Cost of production	Invoiced unit prices, f.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4624)	Los Angeles Lathes
R78/5	Watson, J. January 9, 1978	Given International, Inc.	R69/8759, etc.	Cost of production	Invoiced unit prices, f.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4624)	Los Angeles Lathes
R78/6	Watson, J. January 9, 1978	Given International, etc.	R70/8417, etc.	Cost of production	Invoiced unit prices, f.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4624)	Los Angeles Lathes
R78/7	Watson, J. January 11, 1978	Geigy Chemical Corporation	R65/25471, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.3% representing profit and general expenses usually made	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R78/8	Watson, J. January 11, 1978	Sandoz, Inc.	R65/23441, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.5% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties papable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/9	Watson, J. January 11, 1978	Sandoz, Inc.	R65/23517, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 23.5% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R78/10	Watson, J. January 11, 1978	Sandoz-Wander, Inc.	75-2-00395, etc.	United States value	U.S. selling prices, less 1% cash discount as	U.S. v. Geigy Chemical Corporation et al.	New York Benzenoid dyestuffs

					determined by customs officer at time of appraisement; less 29.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.28 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	(C.A.D. 1155)	
R78/11	Rao, J. January 12, 1978	Patrick & Graves	R65/10665, etc.	Cost of production	Specified in column designated "Claimed Value" on schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen automobiles
R78/12	Rao, J. January 12, 1978	Patrick & Graves	R65/23720	Cost of production	DM4996.80 (3 model 311); DM5241.60 (2 model 361)	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen automobiles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/13	Watson, J. January 12, 1978	Geigy Chemical Corporation	R67/07099, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R78/14	Watson, J. January 12, 1978	Geigy Chemical Corporation	R67/17421, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 38.7% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					or kind; less cost of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R78/15	Watson, J. January 12, 1978	Sandoz, Inc.	R65/19609, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

Appeal to United States Court of Customs and Patent Appeals

APPEAL 78–3.—Excelsior Import Associates, Inc. *v.* United States.—WOMEN'S COTTON GAUZE SHIRTS—WEARING APPAREL: ORNAMENTED; NOT ORNAMENTED—TSUS. Appeal from C.D. 4726.

In this case women's cotton gauze shirts were held properly classified under item 382.00, Tariff Schedules of the United States, as wearing apparel, ornamented, and assessed with duty at 35 percent ad valorem. Plaintiff (appellant) claimed that the merchandise should be classified under item 382.33 as wearing apparel, not ornamented, with duty at 16.5 percent. The sole issue to be determined was whether "tucking" on the breast pockets causes the shirts to be "ornamented" within the purview of item 382.00.

It is claimed that the Customs Court erred in finding and holding that the imports are properly classifiable under item 382.00; in not finding and holding that they are classifiable under item 382.33; in finding and holding that the imports are ornamented textile articles in an accepted trade sense, and in not finding and holding to the contrary; in not finding and holding that the tucking on the imports is functional, and in finding and holding, in effect, that it is not; in finding and holding that the presumption of correctness of the classification was not overcome; in not finding and holding that the importer proved by a preponderance of the evidence that the Government's classification was incorrect; in failing to give due weight to the testimony of the Government's witnesses which supports the importer's contentions; in failing to give due weight to the testimony of the importer's witnesses which supports its contentions.

ERRATUM

In Customs Bulletin, Vol. 12, No. 1, dated January 4, 1978, page 33, the 8th line of the first paragraph should read as follows:

"which is a clear plastic dome covering two miniature figures on a metal pin representing a miniature man and a woman".

Index

U.S. Customs Service

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)

CB SERIA300SDISSDUE039R 1
SERIALS PROCESSING DEPT
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S. GOVERNMENT PRINTING OFFICE: 1978